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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,301	12/19/2001	Maurice R. De Billot	17396/09015	8087

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EXAMINER

CLARDY, S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,301

Applicant(s)

DE BILLOT ET AL.

Examiner

S. Mark Clardy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 76-133 is/are pending in the application.
- 4a) Of the above claim(s) 76-102, 107, 119 and 121-133 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 103-106, 108-118, 120 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Art Unit: 1616

Claims 76-133 are pending in this application.

Applicant's election with traverse of the invention of Group I (fungicidal method), and the species indicated below in the reply filed on October 25, 2004, is acknowledged. The traversal is on the ground(s) that the previous examiner had examined all claims. This is not found persuasive because examination in this application has essentially restarted from the filing of the RCE, and because the restriction between fungicidal compositions, herbicidal compositions, and plants, is indicated by the diverse nature of the classes of invention as indicated by their distinct classifications.

The requirement is still deemed proper and is therefore made FINAL.

The elected species comprises:

- a. silthiofam (fungicidal component)
- b. glyphosate (herbicidal component)
- c. *Rhizobium* spp. (inoculating fungi)
- d. soybean (*Glycine max*, treated plant species).

It is noted that Group I does not contain any herbicidal component, in contrast to the elected species. Thus applicants' elected Group is taken as Group II, which does. In partial response to applicants' suggestion on p. 3 of the response, it is agreed to examine Groups II and III together, because each group possesses the herbicidal component. Further, claim 107 contains no herbicidal component and should have been included with Group I. Thus, claims 103-106, 108-118 and 120, drawn to methods of increasing plant (soybean) vigor and/or yield by treatment with components a – c, above, have been examined herein.

Art Unit: 1616

Claims 76-102, 107, 119, and 121-133 (Groups I and IV) have been held withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 25, 2004.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 103, 108, 118, and 120 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears that the term "glyphosinate" in claims 103, 108, and 118 was intended to be "glufosinate".

Claim 120 recites the limitation "the herbicide" in line 1. There is insufficient antecedent basis for this limitation in the claim because (nonelected) claim 119 from which it depends contains no herbicidal component.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

Art Unit: 1616

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 103-106, 108-118 and 120 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Branly et al (US 6,232,270), Theodoridis et al (US 6,277,847), and Phillion et al (EP 0 538 231).

Branly et al teach agricultural compositions containing bacteria such as *Azotobacter*, *Pseudomonas*, *Bacillus*, and *Rhizobium* (columns 5-7), in combination with herbicides such as glyphosate (col 13, lines 21-23), and systemic fungicides (lines 30-34), for application to crops such as soybeans (lines 41-44).

Theodoridis et al teach herbicidal compounds in compositions comprising additional herbicidal agents such as glyphosate (col 13, lines 12-15), fungicidal agents (col 14, lines 20-38), and soil conditioners which include microorganisms which are favorable to plant growth such as *Bacillus*, *Pseudomonas*, *Azotobacter*, *Azospirillum*, and *Rhizobium* (lines 50-65).

Phillion et al teach that applicants' fungicidal agents were known at the time the invention was made, and would have thus been available to select for the systemic fungicidal components of Branly et al or Theodoridis et al.

One of ordinary skill in the art would be motivated to combine these references because Branly et al and Theodoridis et al both disclose the utility of combining fungicides and herbicides in a single agrochemical composition, and because Phillion et al disclose known fungicidal agents.

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' components into a single composition for application to plants such as soybeans because the prior art teaches the combination of herbicidal

Art Unit: 1616

agents such as glyphosate with fungicidal agents and beneficial microorganisms such as rhizobium for application to crops such as soybeans. It would have been within the skill level of the ordinary artisan to select any of the various available fungicidal agents, including silthiofam.

It may be useful to compare the methods claimed herein with those of the closest prior art, e.g., Branly et al or Theodoridis et al.

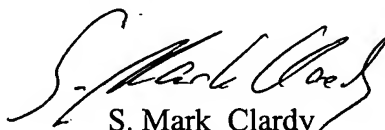
No claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


S. Mark Clardy
Primary Examiner
Art Unit 1616

January 21, 2005